

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

FRANCES SINNER,)	
)	
Grievant,)	
)	
and)	ADJUDICATOR'S DECISION
)	
IOWA DEPARTMENT OF HUMAN SERVICES,)	87-MA-06
)	
Employer.)	

Appearances

For the Department of Human Services

Pat Kasperbauer, Personnel Director,
Glenwood State Hospital - School
Max Cupp, Director of Domestic Services,
Glenwood State Hospital - School

For the Grievant

Frances Sinner, Grievant

I. JURISDICTION

Pursuant to Chapter 19A Code of Iowa §14 (1986) 581 - Ia. Admin. Code §12 (1986) and 621 - Ia. Admin. Code (1986), Frances Sinner appeals the Department of Human Service's denial of her grievance regarding the change made in her job duties and the denial of an opportunity to compete for a supervisory position. The grievance hearing was held in Des Moines, Iowa on October 22, 1986. The hearing was tape recorded. The parties did not file briefs.

II. EXHIBITS

Joint Exhibit 1:

- 1, 2 - Third Step Grievance Response, March 6, 1986
- 3 - Statement of Employee Grievance, January 9, 1986
 - Step 1 Response, January 15, 1986
 - Step 2 Response, January 27, 1986

- 4 - DHS Interoffice Memorandum, December 30, 1985
- 5 - Merit Position Certification, May 18, 1984
- 6 - DHS Interoffice Memorandum, January 15, 1986
- 7, 9 - Sinner's Written Attachment to Grievance
- 10 - Laundry Supervisor I Job Description
- 11, 12 - Secretary I Job Description
- 13, 14 - Storekeeper II Job Description
- 15, 16 - Linen Room Attendant II Job Description
- 17, 18 - Sewing Room Attendant II Job Description
- 19 - DHS Interoffice Memorandum, January 15, 1986
- 20 - Sinner's appeal to Step 2, January 21, 1986
- 21 - Sinner's appeal to Step 3, February 3, 1986

III. ISSUE

Whether the Department of Human Services substantially complied with Chapter 19A, Code of Iowa and the rules and regulations of the Department of Personnel by changing Frances Sinner's job duties and by denying her the opportunity to compete for the position of Laundry Supervisor I.

IV. FACTS

This grievance involves job classifications at the Glenwood State Hospital - School (Glenwood) which function to provide laundry and clothing services for residents of that facility. Approximately 14 to 16 employees carry out these responsibilities in two divisions - specialized Manufacturing and a Clothing Store, which are located in the same building at Glenwood.

Historically, employees in this area were all bargaining unit employees who functioned with no immediate supervisor, but rather reported directly to the Director of Domestic Services. In 1982, Glenwood administrators decided that a new "Laundry Supervisor I" (LS I) classification was needed to provide a

non-bargaining unit immediate supervisor for these employees. Glenwood received approval at that time from the Merit Employment Department (Merit) to establish an LS I position, and, on October 2, 1982, an advertisement for the vacant position appeared in a local newspaper. The LS I position was not immediately filled, however, because a hiring freeze was in effect and Glenwood had not yet received approval from Merit to fill the newly-created position. Such approval was not forthcoming until 1984.

Sometime in the spring of 1984, Glenwood received approval to fill the LS I position and requested a certification (list of approved applicants) from Merit. Glenwood subsequently received a list of three approved applicants for the position, one of whom was Linda Goos. Goos had been employed at Glenwood in a "Secretary I" position since 1978. In June, 1984, Goos was hired to fill the new LS I position, which was given the functional title of "Clothing Services Supervisor."

It appears that Goos submitted her application for the LS I position in the spring of 1984, but the record does not indicate how Goos learned of the availability of the position. It appears that the position was never posted, and that the only advertisement for the position was the one that appeared in the newspaper in 1982.

One of the employees Linda Goos was hired to supervise was the grievant, Frances Sinner. Sinner has worked in the clothing services area at Glenwood for approximately 14 years. She was originally hired as a "Linen Room Attendant I", was promoted to "Linen Room Attendant II" after approximately 2 years, and was promoted to "Storekeeper II" in 1978, where she has remained to the present time. Sinner's duties as a Storekeeper II have included, inter alia, clothing ordering, inventory, and coordinating staff in clothing services. When Goos was hired as the Clothing Services Supervisor (LS I) in 1984, Sinner was told by the Glenwood administration that the hiring of a new supervisor

would not impact substantially on Sinner's job duties. Sinner's duties did, in fact, remain substantially the same from the time Goos was hired in 1984 until January, 1986.

In late 1985, due to a loss of staff and a hiring freeze, the Glenwood administration determined that a reassignment of duties was necessary in order to continue efficient operations. On December 30, 1985, Sinner received the following memorandum from Goos:

This is to notify you that effective January 13, 1986, your job duties will be changed. This change involves assuming the responsibilities of the Area I clothing needs. With the acquisition of these new duties, you will no longer be responsible for the clothing ordering, inventory, and coordinating of staff in clothing services.

On January 9, 1986, Sinner filed the instant grievance. On January 15, 1986, Sinner received the following memorandum from Max Cupp, Director of Domestic Services.

Fran, this memo is to clarify to you the permanency of your reassigned duties. These duties will only be temporary until we can hire into the vacated Linen Room Attendant position. Your classification of Storekeeper II and rate of pay will both remain intact as this is only a temporary assignment. At the present time this vacant position has been P-5ed and we are awaiting approval to hire from Des Moines.

Commencing January 13, 1986 and continuing to the time of hearing, Sinner has retained her "Storekeeper II" classification and rate of pay, but has been performing the duties of the lower classification of "Linen Room Attendant II". Goos has taken over the responsibilities of the "Storekeeper II" position previously performed by Sinner.

Although Linda Goos assumed her supervisory position over Sinner and other clothing services employees in 1984, Sinner did not file the instant grievance until January 1986 when she became upset over the change in her job duties and the assumption of her "Storekeeper II" duties by Goos. Sinner at that time

began investigating the circumstances surrounding the filling of Goos' supervisory position in 1984. Sinner learned that the "Clothing Services Supervisor" position was officially classified as a "Laundry Supervisor I" position, that the position had never been posted, and that the position had been advertised in the newspaper in 1982. Sinner had not seen the newspaper ad in 1982 and was not aware that the LS I vacancy existed until it was filled by Goos in 1984. Sinner knew at the time Goos assumed the LS I position that Goos had been a Secretary I at Glenwood for a number of years prior to her promotion to the LS I vacancy. Sinner did not believe that Goos could have possessed the minimum qualifications for the LS I position, since she had been only a Secretary I for many years prior to filling the position. Sinner believed that she, herself, and other clothing services employees were more qualified than Goos, and should have been notified and given the opportunity to apply for the position.

Sinner's grievance was denied at the first three steps of the grievance procedure. At some point during the grievance process, the Merit Commission read a copy of Goos' original job application for the LS I position to Sinner. Sinner continued to question Goos' qualifications, and believed that Goos may have falsified information as to her qualifications in her job application in order to appear to meet the minimum requirements for the job.

V. CONCLUSIONS OF LAW

At hearing, Glenwood asserted that the LS I position had been properly filled pursuant to Merit procedures, and also moved to dismiss Sinner's grievance as untimely. Glenwood argued that Sinner did not file the instant grievance regarding Glenwood's alleged improper filling of the LS I vacancy until January, 1986, and the actions complained of occurred in June, 1984, when the vacancy was filled.

Rule 12.1(1) of the Rules and Regulations of the Iowa Department of Personnel (IDOP) states, in relevant part,

Step 1. The grievant shall initiate the grievance by submitting it in writing to the immediate supervisor within fourteen (14) calendar days following the day the grievant first became aware of, or should have become aware of, the grievance issue through the exercise of reasonable diligence.

Ch. 581 - Admin. Code §12.1 (1986)

Sinner argues that she did not become aware of all of the circumstances surrounding the filling of the LS I position until she began investigating the matter upon receiving notification that her job duties were to be changed. Sinner argues that, in any event, Glenwood's actions in filling the vacancy constitute an obvious injustice which should not be ignored based on a technical timeliness argument.

It is true that Sinner was not aware of the existence of the LS I vacancy until it was filled, and did not learn many of the details concerning the position until 1986. She did, however, know immediately after Goos was hired in 1984 that a supervisory position had been created over her own position, that the position had apparently not been posted or otherwise made known to herself or other employees, and that a person was hired to fill the position who apparently was less qualified for the position than herself or other employees. Through the exercise of reasonable diligence, Sinner should, at that time, have raised questions and pursued any complaint concerning the filling of the supervisory position. She testified that she chose not to do so because she did not at that time feel that her own job duties were threatened. While it is understandable that Sinner became upset when her job duties were later changed, I cannot ignore the time limitation for filing a grievance regarding the employer's filling of the vacancy based on the fact that the employer, a year and a half later, took another personnel action which was adverse to an employee. Such a decision on my part would defeat the purpose of the time requirements for filing

grievances set out in the rules, since the employer could be defending personnel decisions made years earlier any time new personnel actions are taken which adversely impact on employees. Accordingly, whether or not Glenwood properly filled the LS I vacancy in 1984, Sinner's grievance in this regard is untimely, and must be dismissed.

The second part of Sinner's appeal, concerning Glenwood's change in her job duties, was timely filed, however, and is not subject to dismissal on the basis of untimeliness. The IDOP rules regarding temporary assignments provide, in relevant part, as follows:

581 - 10.3(19A) Temporary assignments

10.3(1) An appointing authority may assign a permanent employee to special duty when that employee is temporarily needed in a position in another class. This assignment shall be without prejudice to the employee's rights in or to the regularly assigned position. Unless there is a statutory requirement to the contrary, the employee need not be qualified for, nor certified to the class to which temporarily assigned.

10.3(2) An appointing authority may temporarily assign a permanent employee duties that are extraordinary for the employee's class. These duties may be of a level higher than, lower than, or similar to the duties regularly assigned to the employee's class, and may be in addition to or in place of some of the employee's regularly assigned duties.

10.3(4) Requests shall be submitted to the director in writing for assignments to special duty or extraordinary duty that exceed three (3) complete pay periods, explaining the need and the period of time requested. Temporary assignments shall not initially be approved for a period longer than one (1) year. Extensions may be requested. Requests shall be submitted on forms prescribed by the director.

581 - Ia. Admin. Code Ch. 10

The above rules give considerable discretion to the employer to make temporary "out of classification" assignments of employees when the need arises. The wording of §10.3(4) above, however, indicates a recognition that long-term continuance of such a situation is not desirable, since the appointing authority is to seek the approval of the director of IDOP whenever such assignments

exceed three pay periods, explaining the need and period of time requested, and also states that approval will not initially be given for longer than one year, although extensions may be requested.

The undesirable effect of a long-term "temporary" assignment to a lower job classification is perfectly exemplified in Sinner's case. By the time of hearing in the instant case, Sinner had been assigned to the extraordinary duties of a lower job classification for over nine months. If she is still working out of her classification as of today, the assignment has continued well over a year. Although she retains the pay rate and benefits of "Storekeeper II", her duties are those of a "Linen Room Attendant II", a position she held approximately nine years ago prior to being promoted, and one which involves considerably less responsibility than her regular classification. To say that such a situation has a serious adverse impact on Sinner's employee morale is an obvious understatement.

At hearing, Max Cupp, the Director of Domestic Services at Glenwood, stated that, when faced with a loss of staff and a hiring freeze, he had determined that realignment of employee duties was necessary. He stated he felt the selection of Sinner to perform the duties of "Linen Room Attendant II" and the assumption of the "Storekeeper II" duties by Goos was, in his judgment, the best way to continue efficient operations. No evidence was presented, however, to indicate DHS has complied with the requirements of IDOP Rule 10.3(4), set out above, regarding required procedures for requesting approval from the director of IDOP for a temporary assignment which exceeds three pay periods. While I have no authority to review the decision of DHS or the IDOP Director as to whether an otherwise legal temporary assignment is necessary or reasonable, Sinner at least has the right to have procedures followed for effectuating her reassignment as set out in the IDOP rules.

Accordingly, I hereby issue the following award:

VI. AWARD

1. Sinner's grievance regarding Glenwood's failure to give her the opportunity to compete for the LS I position is denied as untimely.

2. Sinner's grievance regarding the reassignment of her duties from those of "Storekeeper II" to "Linen Room Attendant II" is granted to the following limited extent: If Sinner is continuing to perform duties of the lower job classification at the present time, DHS is hereby directed to immediately comply with the provisions of IDOP Rule 10.3(4), as follows:

a. The appointing authority shall submit a request to the director of IDOP in writing for the approval of the extraordinary duty assignment, explaining the need and period of time requested, with a copy of this decision attached to the request.

b. Copies of all documents related to the Rule 10.3(4) request, including the request and the director's response, shall be provided to the adjudicator and to the grievant.

DATED at Des Moines, Iowa this 17th day of March, 1987.

M. Sue Warner

M. SUE WARNER, ADJUDICATOR